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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,282	03/10/2004	David Kirchhoff	03968-P0001D	2941
24126	7590	09/21/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619				ASTORINO, MICHAEL C
ART UNIT		PAPER NUMBER		
3736				

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/797,282	KIRCHHOFF ET AL.
	Examiner Michael C. Astorino	Art Unit 3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8, 11-14, 16-35, 38-44 and 47-75 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8, 11-14, 16-35, 38-44 and 47-75 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) .....
Paper No(s)/Mail Date _____. .	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

The examiner acknowledges the amendment and remarks filed June 6, 2005, wherein claims 1, 14, 29, 41 and 62 are amended and claims 9, 10, 15, 36, 37, 45 and 46 are cancelled.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12, 14-15, 17-18, 20-32, 35-39, 41-60, and 62-74 are rejected under 35

U.S.C. 102(e) as being anticipated by Mault et al. US Patent Number 6,513,532 B2 which incorporates by reference Mault 6,478,736 B1, see column 19, lines 1-36, unless otherwise stated the italicized portions cited below are directed to the Mault '736.

Claim 1. A method for forming a meal plan based on a weight control program for a participant, said method comprising:

receiving an initial personal profile indicative of characteristics of the participant; (*fig. 6*)

establishing a daily food consumption goal for the participant based on the initial

personal profile; (*fig. 8B and 8C*)

forming an alterable meal plan schedule based on at least one component of the initial personal profile, the alterable meal plan schedule being consistent with the daily food

consumption goal and utilizing pre-established food combinations having predetermined values associated therewith; (*figure 9 and 8C*)

providing the alterable meal plan schedule to the participant (*figure 9 and 8C*); generating a journal operable to maintain data in response to the participant acknowledging consumption of at least a portion of the pre-established food combinations (*figures 7-12, Note to the applicant: the food combinations in Mault are directed to the food picked from the food database in figure 9*).

computing a total food value based on the predetermined values associated with the pre-established food combinations; receiving an activity performed by the participant; determining an activity value based on the received activity; computing a net total value based on the total food value and activity value; and computing a difference value between the net total value and the daily food consumption goal. (*fig. 8B, 11A, 11B, 12B, and 12C*); and crediting the participant with the difference value for utilization of adjusting the daily food consumption goal of a future day. (*fig. 8B, 11A, 11B, 12B, and 12C*)

In regards to claims 2-8, and 11-12 see previous office action for details of rejection

Claim 14. A method for facilitating control of body weight, said method comprising: receiving a profile from a user, the profile including initial body weight; determining an initial time-based plan as a function of the profile received from the user to facilitate control of body weight; selectively providing to the user the time-based plan for facilitating control of body weight; and receiving an indication from the participant of a user type indicative of whether the participant prefers a structured meal plan schedule or a non-structured meal plan schedule (*figures 6-12 and 15, lines 21-30*) and modifying the initial time-based plan, in response to user

input, to accommodate the user type selected by the user. (*figures 6-12; see also, Mault et al '532 column 15, lines 21-30*)

In regards to claims 17-18, and 20-28 see previous office action for details of rejection.

Claim 29. A method for forming a meal plan based on a weight control program for a participant, said method comprising: receiving an initial personal profile indicative of characteristics of the participant; establishing a daily food consumption goal for the participant based on the initial personal profile; forming an alterable meal plan schedule based on at least one component of the initial personal profile, the alterable meal plan schedule being consistent with the daily food consumption goal and utilizing foods having values associated therewith; providing the alterable meal plan schedule to the participant; receiving a modification to the alterable meal plan schedule; and applying the modification to the alterable meal plan schedule. (*fig 6-12*) computing a total food value based on the values associated with the foods; receiving an activity performed by the participant; determining an activity value based on the received activity; computing a net total value based on the total food value and activity value; and computing a difference value between the net total value and the daily food consumption goal; (*fig. 8B*) and crediting the participant with the difference value for utilization of adjusting the daily food consumption goal of a future day. (*fig. 8B*)

In regards to claims 30-35 and 38-39 see previous office action for details of rejection.

Claim 41. A method for tracking consumption of foods associated with a meal plan based on a weight control program for a participant, said method comprising: receiving an initial personal profile indicative of characteristics of the participant; establishing a daily food consumption goal for the participant based on the initial personal profile; forming a meal plan

schedule based on at least one component of the initial personal profile, the meal plan schedule being consistent with the daily food consumption goal and utilizing foods having values associated therewith; providing the meal plan schedule to the participant; and generating a journal operable to maintain data in response to the participant acknowledging consumption of at least a portion of foods associated with the meal plan schedule. (*fig. 7-12*) computing a total food value based on the values associated with the foods; receiving an activity performed by the participant; determining an activity value based on the received activity; computing a net total value based on the total food value and activity value; and computing a difference value between the net total value and the daily food consumption goal (*fig. 8B*) and crediting the participant with the difference value for utilization of adjusting the daily food consumption goal of a future day. (*fig. 8 and 12*)

In regards to claims 42-44 and 47-60 see previous office action for details of rejection.

Claim 62. A method for forming a meal plan based on a weight control program for a participant, said method comprising: receiving an initial personal profile indicative of characteristics of the participant; establishing a daily food consumption goal for the participant based on the initial personal profile; receiving an indication from the participant indicative of a meal plan type desired by the participant, wherein each of the meal plan types has an associated percentage of at least one of carbohydrates, protein, fat, and fruits and vegetables that the user is prescribed to eat in the meal plan; forming a meal plan schedule based on at least one component of the initial personal profile and upon the indication received from the participant, the meal plan schedule being consistent with the daily food consumption goal and utilizing foods having values associated therewith; and providing the meal plan schedule to the participant. (*fig. 7-12*)

In regards to claims 63-74, see previous office action for details of rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault et al. US Patent Number 6,513,532 B2 which incorporates by reference 6,478,736 B1, see column 19, lines 1-36, *unless otherwise stated the italicized portions cited below are directed to the Mault '736*, as applied to claim 14 above, and further in view of Kolawa et al. US Patent Number 6,370,513 B1.

Mault does not disclose the uses of receiving cultural background of the user, but does disclose a database of food a user may choose from to log into her food diary/journal/log. However, Kolawa et al. disclose the use of a food preference vector for cultures of food or diabetics (column 9, lines 16-31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the diet and monitoring activity-monitoring device of Mault et al. in view of the cultural food or diabetic preference vector of Kolawa et al., since Kolawa et al. asserts in column 1-2, lines 54-8, recommending food choices to prevent unimaginative, repetitive or fast-food type default food choices.

Claims 13, 40, 61 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault et al. US Patent Number 6,513,532 B2 which incorporates by reference 6,478,736 B1, see column 19, lines 1-36, *unless otherwise stated the italicized portions cited below are directed to the Mault '736*, as applied to claim 14 above, and further in view of Abrams et al. US Patent Number 5,673,691 A.

In regards to Claims 13, 40, 61 and 75, Mault et al. discloses the use of a bar code reader to scan in information into the diet log database and entering data from consumer restaurants but does not in a traditional sense generating a shopping list. However, Abrams a reference in an analogous art discloses generating a shopping list based on the meal plan schedule, (*figure 57-65*). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the diet and activity monitoring device of Mault et al. in view of the shopping list function of Abrams, since Mault et al. states the use of the diet and activity monitor seeks to balance the user's busy lives with proper diet, and Abrams generated shopping list of proper nutrition furthers that purpose.

#### *Response to Arguments*

Applicant's arguments filed June 6, 2005 have been fully considered but they are not persuasive.

The applicant states Mault et al. and Mault fail to teach "adjust[ing] the daily food consumption goal of a future day." The examiner disagrees with this assertion. First, in figure 8B the balance is which is synonymous with the crediting the participant with the difference value "-1552." The adjustment of daily food consumption goal of a future day is represented in

the lbs/week a person will have to lose to reach their goal. By crediting the difference the participant will have to lose less pounds per week. Having a reduced rate of pounds per week is another way of stating a participant may adjust there daily food consumption goal of a future day because they can eat more calories to have a lower rate of pounds per week. In a second manner, Mault illustrates “adjusting the daily food consumption goal of a future day.” In figure 12C, Mault illustrates a body trend summary, which therein shows three dates with a corresponding weight: a start date, “today” which is understood as representative of a current date, and a target date. After which, a “To Go” weight is displayed which represents the number of pounds to remove obtain the target weight. The number of pounds is illustrated in a negative number, “-5.08.” However, it is quite apparent to the examiner that if before the “target date” of 42 days the user surpasses the weight, the “To Go” weight will be in the positive not the negative. As such, the user will be required to gain weight, and in gaining weight the person should eat more. Thus, in eating more Mault meets the limitation of adjusting the daily food consumption goal.

In regards to the limitation of claims 14 and 49 of “(i) receiving an indication from the participant of a user type indicative of whether the participant prefers a structured meal plan schedule or a non-structured meal plan schedule and (ii) modifying the initial time-based plan, in response to user input, to accommodate the user type selected by the user.” Firstly, the applicant does not provide a specific definition of a “structured meal plan schedule” or a “non-structured meal plan schedule.” Secondly, “(i) receiving an indication from the participant of a user type indicative of whether the participant prefers a structured meal plan schedule or a non-structured meal plan schedule” does not require showing or an option of a structured or non-structured plan, only receiving an indication from the participant of one or the other. Mault discloses the use of a

weight watchers points in (column 15, lines 21-30), the examiner interprets this as a “structured meal plan” and when the user is not using the weight watchers points program the Mault system would be non-structured.

As far as a “time-based” plan, Mault is a daily plan. Therefore, Mault is time based since the nutrient targets are intended to be within a 24-hour period of time.

The applicant further argues Mault et al. and Mault allow users to enter foods already consumed and perform calculations thereon, and not meal planning functionality. However, figure 8C illustrates daily nutrient targets. The daily nutrient targets are indicative of a meal plan.

The applicant further argues claim 62, “wherein each of the meal plan types has an associated percentage of *at least one* of carbohydrates, protein, fat and fruits and vegetables...” is not taught by Mault et al. and Mault. However, Mault particularly discloses the use of nutritional target s in figure 8C, which include carbohydrates, fats, and protein. Besides, this added limitation does not particularly limit the claim since every meal/food has an “associated percentage of carbohydrates, proteins, and fat...” because every meal/food has a specific breakdown of carbohydrates, proteins, and fat. Additionally, Mault et al. discloses the use of weight watchers points dietary meal planning and the weight watchers points program has “wherein each of the meal plan types has an associated percentage of *at least one* of carbohydrates, protein, fat and fruits and vegetables...”

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA  
September 17, 2005



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